

# Federal Jury Verdict Reporter

The Most Current and Complete Summary of Federal Jury Verdicts

September 2006

Nationwide Federal Jury Verdict Coverage

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## Notable Verdicts in The September 2006 Issue

**Education Sexual Harassment - Indiana (Fort Wayne)** - A teen girl was propositioned by her teacher - Zero p. 9

**Employment Retaliation - Arkansas (Ft. Smith)** - A professor was fired after complaining of age discrimination - the university countered that it was plagiarism - \$161,802 p. 4

**Employment Retaliation - Florida (Gainesville)** - Music professor suffered retaliation when she complained of gender discrimination - \$150,000 p. 7

**Equal Protection - Wyoming (Cheyenne)** - Two lesbian school administrators missed a promotion after they were seen holding hands at a Victoria's Secret - \$160,515 p. 22

**Medical Negligence - Washington (Spokane)** - Plaintiff sustained an enhanced injury (amputation of his leg) after his orthopedist missed a vascular injury - \$604,000 p. 21

**Pregnancy Discrimination - Oregon (Portland)** - Just days after reporting she was pregnant, the plaintiff, a store manager, was summarily fired - \$475,000 p. 17

**Products Liability - Maine (Portland)** - In an industrial accident, plaintiff suffocated when he became pinned in a forklift - \$4,000,000 p. 13

**Products Liability - Michigan (Detroit)** - Plaintiff was badly hurt when his experimental plane crashed - Zero p. 14

**Products Liability - Oklahoma (Tulsa)** - Plaintiff suffered when fire shot out of the air vents in his Nissan - Zero p. 16

**Reverse Race Discrimination - South Carolina (Charleston)** - A white teacher at a predominantly black middle school was viciously harassed by students - school administrators did nothing to protect her - \$307,500 p. 17

**Sexual Harassment - Missouri (Kansas City)** - Pornography was placed in a Bible on plaintiff's desk - \$101,000 p. 15

**Wrongful Death - Colorado (Denver)** - A policeman in Denver shot a man who he thought would run him over - Zero p. 6

## Verdict of the Month

### PRODUCTS LIABILITY

*Oklahoma Northern District - Tulsa*

**Plaintiff suffered serious burns when while driving his 1996 Nissan Pathfinder on the interstate, fire began to erupt from the air-conditioning vent – he blamed the sudden defective fuel system and inadequate firewall protection**

**Caption:** *Vo v. Nissan North America*, 4:05-64

**Plaintiff:** Michael L. Bardirck, Lambert Dunn and Thomas J. Steece, Oklahoma City, OK

**Defense:** Lindsay J. McDowell and Leslie J. Southerland, *Rhodes Hieronymus Jones Tucker & Gable*, Tulsa, OK

**Verdict:** Defense verdict on liability

**Judge:** Claire V. Eagan

**Date:** February 8, 2006

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**Premises Liability - While shopping at a mega-retailer, the plaintiff was injured when struck by an employee pushing a cart**

*Alter v. Costco*, 2:05-3887

**Plaintiff:** Brett A. Zekowski, *Parker & Waichman*,  
Great Neck, NY

**Defense:** James Miller, White Plains, NY

**Verdict:** Defense verdict on liability

**Court:** New York Eastern - Central Islip

**Judge:** Joseph F. Bianco

**Date:** 8-10-06

Ruth Alter shopped at a Costco in Carle Place, NY on 5-5-05. As she walked in an aisle, Alter was struck by a cart that pushed by an employee. She has since treated for an L-1 fracture. In this suit, she sought damages from Costco regarding the incident.

The store denied fault – it also diminished damages, noting that the plaintiff's injury was more likely related to a fall she sustained at home just a month earlier.

The verdict on liability was for Costco and Alter took nothing. A defense judgment was entered by the court.

**FMLA**

*Ohio Southern District - Cincinnati*

**An marketing analyst for a major cable company alleged he was illegally fired after taking three FMLA leaves in a single year**

**Caption:** *Dage v. Time Warner Cable*, 1:04-90

**Plaintiff:** Randolph H. Freking and Kelly M. Myers,  
*Freking & Betz*, Cincinnati, OH

**Defense:** Peter K. Newman and Sara E. Hicks,  
*Wood & Lamping*, Cincinnati, OH

**Verdict:** \$400,300 for plaintiff

**Judge:** Susan J. Dlott

**Date:** August 23, 2006

**Facts:** Richard Dage worked as an analyst for Time Warner Cable – he reviewed billing for marketing purposes. In 2002, he took three FMLA leaves, (1) for his father who had cancer, (2) for his own depression, and finally (3) when his son was born. Soon after the third leave, he was fired.

Time Warner explained he was let go because he missed meeting and took confidential documents home with him. Plaintiff countered that these excuses were a pretext. It was his position he was canned for because of his exercise of FMLA rights. Beyond that interference, he also recalled harassment, his co-workers making jokes about his mental health.

As the case was presented to the jury, Dage alleged (1) FMLA retaliation, (2) harassment because of his disability, and (3) that firing violated state-law public policy. If prevailing, he sought compensatory and punitive damages. Time Warner defended as

above that the firing was lawful.

**Jury Instructions/Verdict:** The verdict was mixed. Plaintiff lost on FMLA retaliation and the state-law public policy claim. However the verdict was for him on the claim that he was fired because of his disability. The jury awarded him a total of \$400,300, which included \$308,300 for backpay and punitives of \$40,000.

**PRODUCTS LIABILITY**

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**Judge:** Claire V. Eagan

**Date:** February 8, 2006

**Facts:** Anh Vo was driving a 1996 Nissan Pathfinder on the Will Rogers Parkway (I-44) in Oklahoma at 70 mph. The air-conditioning was too cold and he turned it off. Turning it back on, flames suddenly shot out. Vo stopped the car and tried to flee the flames – the power door was locked and it failed. Ultimately he escaped by breaking the window. However in the process, he sustained significant burns to his face, arm and back.

In this lawsuit, Vo sued Nissan and alleged a defect in the Pathfinder. Namely, spring clasp fasteners in the fuel system failed, thus leading a leak and then the fire – he also alleged the firewall protection in the passenger cabin was inadequate. Nissan denied any defect – it postured the fire started in the passenger floorboard and while its cause was not certain, Nissan postured it was unrelated to the fuel system.

**Injury:** Burn injury

**Experts:**  
*Plaintiff* Ron Elwell, Fire Expert, Scottsdale, AZ  
Robert Swint, Engineer, Houston, TX

**Jury Instructions/Verdict:** The verdict on the products count was for Nissan and Vo took nothing. A judgment for the defendant followed.